

**ASSEMBLY BILL**

**No. 927**

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**Introduced by Assembly Member Muratsuchi**

February 22, 2013

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An act to add and repeal Section 6377.6 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 927, as introduced, Muratsuchi. Sales and use taxes: exemption: manufacturing: research and development.

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Those laws provides various exemptions from those taxes.

This bill would exempt from those taxes, on and after January 1, 2014, and before January 1, 2018, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased for use by a qualified person, as defined, for use primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property, as specified, or for use primarily in research and development, as specified, or to maintain, repair, measure, or test that property. The bill would also exempt from those taxes the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased for use by a contractor, as specified, for a qualified person. The bill would require the purchaser to furnish the retailer with an exemption certificate, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes and transactions and use taxes.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature to create a  
2 competitive tax policy for businesses involved with research,  
3 development, and manufacturing.

4     SEC. 2. Section 6377.6 is added to the Revenue and Taxation  
5 Code, to read:

6     6377.6. (a) Beginning January 1, 2014, and before January 1,  
7 2018, there are exempted from the taxes imposed by this part, the  
8 gross receipts from the sale of, and the storage, use, or other  
9 consumption in this state of, all of the following:

10     (1) Qualified tangible personal property purchased for use by  
11 a qualified person to be used primarily in any stage of the  
12 manufacturing, processing, refining, fabricating, or recycling of  
13 property, beginning at the point any raw materials are received by  
14 the qualified person and introduced into the process and ending at  
15 the point at which the manufacturing, processing, refining,  
16 fabricating, or recycling has altered property to its completed form,  
17 including packaging, if required.

18     (2) Qualified tangible personal property purchased for use by  
19 a qualified person to be used primarily in research and  
20 development.

21     (3) Qualified tangible personal property purchased for use by  
22 a qualified person to be used primarily to maintain, repair, measure,  
23 or test any qualified tangible personal property described in  
24 paragraph (1) or (2).

1 (4) Qualified tangible personal property purchased for use by  
2 a contractor purchasing that property for use in the performance  
3 of a construction contract for the qualified person, who will use  
4 the property as an integral part of the manufacturing, processing,  
5 refining, fabricating, or recycling process, or as a storage facility  
6 for use in connection with those processes.

7 (b) For purposes of this section:

8 (1) “Fabricating” means to make, build, create, produce, or  
9 assemble components or property to work in a new or different  
10 manner.

11 (2) “Manufacturing” means the activity of converting or  
12 conditioning tangible personal property by changing the form,  
13 composition, quality, or character of the property for ultimate sale  
14 at retail or use in the manufacturing of a product to be ultimately  
15 sold at retail. Manufacturing includes any improvements to tangible  
16 personal property that result in a greater service life or greater  
17 functionality than that of the original property.

18 (3) “Primarily” means 50 percent or more of the time.

19 (4) “Process” means the period beginning at the point at which  
20 any raw materials are received by the qualified person and  
21 introduced into the manufacturing, processing, refining, fabricating,  
22 or recycling activity of the qualified person and ending at the point  
23 at which the manufacturing, processing, refining, fabricating, or  
24 recycling activity of the qualified person has altered tangible  
25 personal property to its completed form, including packaging, if  
26 required. Raw materials shall be considered to have been  
27 introduced into the process when the raw materials are stored on  
28 the same premises where the qualified person’s manufacturing,  
29 processing, refining, fabricating, or recycling activity is conducted.  
30 Raw materials that are stored on premises other than where the  
31 qualified person’s manufacturing, processing, refining, fabricating,  
32 or recycling activity is conducted shall not be considered to have  
33 been introduced into the manufacturing, processing, refining,  
34 fabricating, or recycling process.

35 (5) “Processing” means the physical application of the materials  
36 and labor necessary to modify or change the characteristics of  
37 tangible personal property.

38 (6) “Qualified person” means either of the following:

39 (A) A person who is primarily engaged in those lines of business  
40 classified in Industry Groups 3111 to 3399, inclusive, Industry

1 Group 5112, NAICS Industry 22111, or NAICS Industry 541711  
2 of the North American Industry Classification System (NAICS)  
3 published by the United States Office of Management and Budget,  
4 2012 edition.

5 (B) An affiliate of a person who is a qualified person pursuant  
6 to subparagraph (A) if the affiliate is included as a member of the  
7 qualified person's unitary group for which a combined report is  
8 required to be filed under Article 1 (commencing with Section  
9 25101) of Chapter 17 of Part 11.

10 (7) (A) "Qualified tangible personal property" includes, but is  
11 not limited to, all of the following:

12 (i) Machinery and equipment, including component parts and  
13 contrivances such as belts, shafts, moving parts, and operating  
14 structures.

15 (ii) Equipment or devices used or required to operate, control,  
16 regulate, or maintain the machinery and equipment, including,  
17 without limitation, computers, data processing equipment, and  
18 computer software, together with all repair and replacement parts  
19 with a useful life of one or more years, whether purchased  
20 separately or in conjunction with a complete machine and  
21 regardless of whether the machine or component parts are  
22 assembled by the qualified person or another party.

23 (iii) Qualified tangible personal property used in pollution  
24 control that exceeds standards established by this state or any local  
25 or regional governmental agency within this state.

26 (iv) Special purpose buildings and foundations used as an  
27 integral part of the manufacturing, processing, refining, fabricating,  
28 or recycling process, or that constitute a research or storage facility  
29 used during those processes. Buildings used solely for warehousing  
30 purposes after completion of those processes are not included.

31 (B) "Qualified tangible personal property" does not include any  
32 of the following:

33 (i) Consumables with a useful life of less than one year.

34 (ii) Furniture, inventory, and equipment used in the extraction  
35 process, or equipment used to store finished products that have  
36 completed the manufacturing, processing, refining, fabricating, or  
37 recycling process.

38 (iii) Tangible personal property used primarily in administration,  
39 general management, or marketing.

1 (8) “Refining” means the process of converting a natural  
2 resource to an intermediate or finished product.

3 (9) “Research and development” means those activities defined  
4 in Section 174 of the Internal Revenue Code or in any regulations  
5 thereunder.

6 (10) “Useful life” for tangible personal property that is treated  
7 as having a useful life of one or more years for state income or  
8 franchise tax purposes shall be deemed to have a useful life of one  
9 or more years for purposes of this section. “Useful life” for tangible  
10 personal property that is treated as having a useful life of less than  
11 one year for state income or franchise tax purposes shall be deemed  
12 to have a useful life of less than one year for purposes of this  
13 section.

14 (c) An exemption shall not be allowed under this section unless  
15 the purchaser furnishes the retailer with an exemption certificate,  
16 completed in accordance with any instructions or regulations as  
17 the board may prescribe, and the retailer retains the exemption  
18 certificate in its records and furnishes the exemption certificate to  
19 the board upon request. The exemption certificate shall contain  
20 the sales price of the qualified tangible personal property.

21 (d) Notwithstanding any provision of the Bradley-Burns  
22 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
23 with Section 7200)) or the Transactions and Use Tax Law (Part  
24 1.6 (commencing with Section 7251)), the exemption established  
25 by this section shall not apply with respect to any tax levied by a  
26 county, city, or district pursuant to, or in accordance with, either  
27 of those laws.

28 (e) (1) Notwithstanding subdivision (a), the exemption provided  
29 by this section shall not apply to any sale or use of tangible  
30 personal property that, within one year from the date of purchase,  
31 is either removed from California, converted from an exempt use  
32 under subdivision (a) to some other use not qualifying for the  
33 exemption, or used in a manner not qualifying for the exemption.  
34 The taxpayer that has received the exemption under this section  
35 for purchasing qualifying tangible personal property shall notify  
36 the board if the property is either removed from California,  
37 converted from an exempt use under subdivision (a) within one  
38 year from the date of purchase, or used in a manner not qualifying  
39 for the exemption.

(2) If a purchaser certifies in writing to the seller that the tangible personal property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(f) At the time necessary information technologies and electronic data warehousing capabilities of the board are sufficiently established, the board shall determine an efficient means by which qualified persons may electronically apply for, and receive, a form of exemption certificate that contains information that would assist them in complying with this part with respect to the exemption established by this section.

(g) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.